

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JESSE J. FRANKLIN,

Petitioner,

v.

Case No. 02-C-0677

WISCONSIN DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER DENYING MOTION TO PROCEED IN FORMA PAUPERIS

On March 30, 2006, this court denied Jesse J. Franklin's petition for habeas corpus pursuant to 28 U.S.C. § 2254. The parties had previously consented to the full jurisdiction of a magistrate judge. On July 19, 2006, this court denied the petitioner's request for a certificate of appealability. On July 31, 2006, the petitioner filed a motion to proceed in forma pauperis on appeal. Due to a series of clerical errors, the petitioner's motion was improperly presented to Judge Lynn Adelman and on August 5, 2006, Judge Adelman granted the petitioner's motion. This order has been subsequently withdrawn by Judge Adelman on August 11, 2006. The motion is now properly before this court.

Before a habeas petitioner may proceed on appeal, the petitioner must receive a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b). This court has denied the petitioner's request for a certificate of appealability for the reasons previously stated in the Order dated July 19, 2006. Therefore, without a certificate of appealability, there can be no appeal. Because there will be

no appeal, the petitioner is not required to pay filing fees, and thus the petitioner's motion to proceed in forma pauperis on appeal is moot. The court notes, however, that even though the district court has denied the certificate, the petitioner may request a circuit judge to issue a certificate. Fed. R. App. P. 22 (b)(1). In the event that the circuit judge saw fit to issue a certificate, the circuit court would then need to address the motion to proceed in forma pauperis on appeal.

IT IS THEREFORE ORDERED that Jesse Franklin's motion to proceed in forma pauperis on appeal is **denied as moot**.

Dated at Milwaukee, Wisconsin, this 14th day of August, 2006.

s/AARON E. GOODSTEIN
United States Magistrate Judge